Supreme Court, U.S.
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CLERK

No. 89-658

In The

Supreme Court of the United States

October Term, 1989

JOHN L. CHEEK,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

JOINT APPENDIX

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The Judgment and Commitment Order of the District Court is included in the Petition for Certiorari as Appendix B.

The Opinion of the Court of Appeals for the Seventh Circuit affirming the conviction is reported at 882 F.2d 1263 (7th Cir. 1989), and is included in the Petition for Certiorari as Appendix A.

The Order of the Court of Appeals for the Seventh Circuit staying the mandate is included in the Petition for Certiorari as Appendix F.

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT

(title omitted in printing)

03/09/87

1 Filed indictment (Dkt'd 03/18/87).

04/14/87

8 Order own recognizance bail set in the amount of $4,500.00 (Enter Pretrial Release order. (Draft) Defendant allowed to travel throughout the Continental U.S.) (JUDGE PLUNKETT) (Dkt'd 04/15/87).

10 Defendant enters plea of not guilty (Counts 1-7) (Defendant appears without counsel. Court enters a plea for defendant.) (JUDGE PLUNKETT) (Dkt'd 04/16/87).

09/14/87

79 Filed superseding indictment (Dkt'd 09/29/87).

09/18/87

83 Arraignment held (Counts S1-S10) (JUDGE PLUNKETT) (Dkt'd 09/29/87).

83 Defendant enters plea of not guilty (Counts S1-S10) (Court will make oral findings on all pending motions before the scheduled trial date.) (JUDGE PLUNKETT) (Dkt'd 09/29/87).

10/26/87

94 Trial begins-jury (Counts S1-S10) (JUDGE PLUNKETT) (Dkt'd 10/29/87).

11/12/87

128 Jury verdict of guilty (Counts S1-S10) (JUDGE PLUNKETT) (Dkt'd 11/16/87).

02/02/88

141 Motion for judgment of acquittal denied (MOT#40) (Defendant's motion for a new trial is denied. For further detail see order on the reverse of the original minute order form.) (JUDGE PLUNKETT) (Dkt'd 02/04/88).

03/16/88

149 Sentencing of defendant (Counts S1-S10) (The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR AND ONE (1) DAY on each of the Counts 1, 3 and 5. Said sentence on Counts 1, 3, 5 to run concurrently with each other. IT IS ADJUDGED that on each of Counts 2, 4, and 6 through 10 the defendants is placed on probation for a period of FIVE (5) YEARS, on condition that he comply with the general conditions of probation. Said sentence on Counts 2, 4 and 6 through 10 to run concurrently with each other and consecutively with the sentence imposed on Counts 1, 3 and 5. IT IS FURTHER ORDERED that the following conditions be imposed on probation: 1. defendant make his best efforts to pay back taxes, interests and penalties and to file future income tax returns on a timely basis. 2. defendant to submit to an examination under oath with regards to his assets, by March 23, 1988. IT IS FURTHER ORDERED that defendant pay a mandatory assessment for the costs of prosecution in the amount of $3,576.66. IT IS FURTHER ORDERED pursuant to 18 U.S.C. Section 3013(a) that the defendant is assessed the sum of $25.00 on each of Counts 7, 8, 9 and 10 and the sum of $50.00 on each of Counts 1, 3, 5 and 6 for a total assessment of

$300.00 IT IS FURTHER ORDERED that imposition of sentence is stayed pending appeal.) (JUDGE PLUNKETT) (Dkt'd 03/22/88).

03/21/88

150 Order filed (Sentencing order dated March 16, 1988 is amended as follows: Defendant is sentenced on Superseding Counts S1-S10. Original counts of Indictment are dismissed on oral motion of government.) (JUDGE PLUNKETT) (Dkt'd 03/22/88).
Dismissed on government's motion (Counts 1-7) (Dkt'd 03/22/88).

03/22/88

152 Filed notice of appeal (Counts S1-S10) (APPL#1) (Dkt'd 03/23/88).

154 Order conditions of bond modified (Defendant's bond is enlarged to allow defendant to travel, for work, throughout the country.) (JUDGE PLUNKETT) (Dkt'd 03/23/88).

SUPERCEDING INDICTMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 87 CR 161
v.	)	Violations: Title 26, United States Code, Sections 7201 and 7203; Title 18, United States Code, Section 287
JOHN L. CHEEK	)	(Filed Sept 14, 1987)

The SPECIAL DECEMBER 1986 GRAND JURY charges:

1. During the calendar year 1980, defendant JOHN L. CHEEK a resident of Elk Grove Village, Illinois, had and received a gross income of approximately $45,855.74 and had a taxable income of approximately $39,915.

2. Upon said taxable income, defendant JOHN L. CHEEK, owed to the United States of America income tax of approximately $10,090 in addition to the $2,524.57 previously withheld from his wages.

3. Defendant JOHN L. CHEEK was required by law on or before April 15, 1981, to make an income tax return to the Internal Revenue Service and to pay such additional income tax.

4. Well knowing the foregoing facts, beginning on or about April 17, 1980 and continuing thereafter until the date of this indictment, in the Northern District of Illinois, Eastern Division, and elsewhere,

JOHN L. CHEEK,

defendant herein, did wilfully and knowingly attempt to evade and defeat said income tax due and owing to the United States for said calendar year by many and diverse acts including:

(a) By failing to make such income tax return on or before April 15, 1981 to the Internal Revenue Service and by failing to pay said income tax due and owing to the Internal Revenue Service; and

(b) By supplying to his employer, American Airlines an Employees Withholding Allowance Certificate (IRS Form W-4), dated April 17, 1980, in which he falsely claimed 39 withholding allowances, to which number of allowances he was not entitled, for the purpose of reducing or eliminating any withholding from his income;

(c) By supplying to his employer, at Chicago, Illinois, a signed Form W-4 in which he falsely claimed 60 withholding allowances, to which number of allowances he was not entitled, for the purpose of reducing or eliminating any withholding from his income; and

(d) By making a claim on IRS Form 843 on approximately January 12, 1981 for refund of $2,524.57 withheld during 1980;

In violation of Title 26, United States Code, Section 7201.

COUNT TWO

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

During the calendar year 1980, in the Northern District of Illinois, Eastern Division,

JOHN L. CHEEK

defendant herein, who was a resident of Elk Grove, Illinois, had and received a gross income of approximately $45,855.74; by reason of such income he was required by law, following the close of the calendar year 1980 and on or before April 15, 1981, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, in the Northern District of Illinois, Eastern Division, or to the Director, Internal Revenue Service Center, Midwest Region, Kansas City, Missouri, stating specifically the items of his gross income and any deductions and credits to which he was entitled; well knowing all of the foregoing facts, he willfully did fail to make the required income tax return to that District Director of Internal Revenue, to that Director of the Internal Revenue Service Center, or any other proper officer of the United States;

In violation of Title 26, United States Code, Section 7203.

COUNT THREE

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

1. During the calendar year 1981, defendant JOHN L. CHEEK, a resident of Elk Grove, Illinois, had and received a gross income of approximately $46,155 and had a taxable income of approximately $40,930.

2. Upon said taxable income, defendant JOHN L. CHEEK, owed to the United States of America income tax of approximately $12,342 in addition to the $603.88 previously withheld from his wages.

3. Defendant JOHN L. CHEEK was required by law on or before April 15, 1982, to make an income tax return to the Internal Revenue Service and to pay such additional income tax.

4. Well knowing the foregoing facts, beginning on or about January 1, 1981, and continuing thereafter until the date of this indictment, in the Northern District of Illinois, Eastern Division, and elsewhere,

JOHN L. CHEEK

defendant herein, did wilfully and knowingly attempt to evade and defeat said income tax due and owing to the United States for said calendar year by many and diverse acts including:

(a) By failing to make such income tax return on or before April 15, 1982 to the Internal Revenue Service and by failing to pay said income tax due and owing to the Internal Revenue Service; and

(b) By supplying to his employer, American Airlines, signed Employees Withholding Allowance Certificates (Form W-4), dated January 1, 1981 and February 10, 1981 in which he falsely claimed he was exempt from withholding tax;

(c) By mailing his employer American Airlines, from the Northern District of Illinois, on approximately January 6, 1981 and January 19, 1981, letters and affidavits to prevent withholding of income taxes;

(d) By mailing a letter to his employer, American Airlines on approximately August 14, 1981, directing American Airlines to honor his claim of exemption from withholding;

(e) By submitting a claim and attached Internal Revenue Service Form 1040 for full refund of all federal taxes withheld from his 1981 wages.

In violation of Title 26, United States Code, Section 7201.

COUNT FOUR

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

During the calendar year 1981, in the Northern District of Illinois, Eastern Division,

JOHN L. CHEEK

defendant herein, who was a resident of Elk Grove, Illinois, had and received a gross income of approximately $46,155.20; by reason of such income he was required by law, following the close of the calendar year 1981 and on or before April 15, 1982, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, in the Northern District of Illinois, Eastern Division, or to the Director, Internal Revenue Service Center, Midwest Region, Kansas City, Missouri, stating specifically the items of his gross income and any deductions and credits to which he was entitled; well knowing all of the foregoing facts, he willfully did fail to make the required income tax return to that District Director of Internal Revenue, to that Director

of the Internal Revenue Service Center, or any other proper officer of the United States;

In violation of Title 26, United States Code, Section 7203.

COUNT FIVE

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

On or about April 15, 1983, in the Northern District of Illinois, Eastern Division,

JOHN L. CHEEK

defendant herein, did make and present to the Internal Revenue Service, an agency of the United States, a claim for refund of federal income taxes withheld for 1982, in the amount of $16,080, knowing his claim in that amount to be false and fraudulent;

In violation of Title 18, United States Code, Section 287.

COUNT SIX

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

1. During the calender year 1983, defendant JOHN L. CHEEK, a resident of Elk Grove, Illinois, had and received a gross income of approximately $61,738 and had a taxable income of approximately $56,175.

2. Upon said taxable income, defendant JOHN L. CHEEK, owed to the United States of America income

tax of approximately $14,681 in addition to the $2,879.66 previously withheld from his wages.

3. Defendant JOHN L. CHEEK was required by law on or before April 15, 1984, to make an income tax return to the Internal Revenue Service and to pay such additional income tax.

4. Well knowing the foregoing facts, beginning on or about January 1, 1983 and continuing thereafter until the date of this indictment, in the Northern District of Illinois, Eastern Division, and elsewhere,

JOHN L. CHEEK,

defendant herein, did wilfully and knowingly attempt to evade and defeat said income tax due and owing to the United States for said calendar year by many and diverse acts including:

(a) By failing to make such income tax return on or before April 15, 1984 to the Internal Revenue Service and by failing to pay said income tax due and owing to the Internal Revenue Service;

(b) By supplying to his employer, American Airlines, signed Employees Withholding Allowances Certificates (Form W-4), dated January 1, 1983 and February 12, 1983 and February 20, 1983, in which he falsely claimed he was exempt from withholding tax;

(c) By using the Mid-American Commodity and Barter Association as a depository and conduit for his income;

(d) On approximately October 4, 1983 and November 2, 1983, by threatening to sue individuals of American Airlines for complying with Internal Revenue Service requirements;

(e) By issuing a letter of demand on American Airlines on approximately January 6, 1984 for $1,408 withheld during 1983;

(f) By making claims for refunds of 1983 taxes withheld and threatening civil rights suits in letters to the Internal Revenue Service on approximately April 2, 1985 and October 26, 1985.

In violation of Title 26, United States Code, Section 7201;

COUNT SEVEN

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

During the calendar year 1983, in the Northern District of Illinois, Eastern Division,

JOHN L. CHEEK

defendant herein, who was a resident of Elk Grove, Illinois, had and received a gross income of approximately $61,738; by reason of such income he was required by law, following the close of the calendar year 1983 and on or before April 15, 1984, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, in the Northern District of Illinois, Eastern Division, or to the Director,

Internal Revenue Service Center, Midwest Region, Kansas City, Missouri, stating specifically the items of his gross income and any deductions and credits to which he was entitled; well knowing all of the foregoing facts, he willfully did fail to make the required income tax return to that District Director of Internal Revenue, to that Director of the Internal Revenue Service Center, or any other proper officer of the United States;

In violation of Title 26, United States Code, Section 7203.

COUNT EIGHT

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

During the calendar year 1984, in the Northern District of Illinois, Eastern Division,

JOHN L. CHEEK

defendant herein, who was a resident of Elk Gove [sic], Illinois, had and received a gross income of approximately $75,145.00; by reason of such income he was required by law, following the close of the calendar year 1984 and on or before April 15, 1985, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, in the Northern District of Illinois, Eastern Division, or to the Director, Internal Revenue Service Center, Midwest Region, Kansas City, Missouri, stating specifically the items of his gross income and any deductions and credits to which he was entitled; well knowing all of the foregoing facts, he willfully did fail to make the required

income tax return to that District Director of Internal Revenue, to that Director of the Internal Revenue Service Center, or any other proper officer of the United States;

In violation of Title 26, United States Code, Section 7203.

COUNT NINE

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

During the calendar year 1985, in the Northern District of Illinois, Eastern Division,

JOHN L. CHEEK,

defendant herein, who was a resident of Elk Grove, Illinois, had and received a gross income of approximately $80,928.00; by reason of such income he was required by law, following the close of the calendar year 1985 and on or before April 15, 1986 to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, in the Northern District of Illinois, Eastern Division, or to the Director, Internal Revenue Service Center, Midwest Region, Kansas City, Missouri, stating specifically the items of his gross income and any deductions and credits to which he was entitled; well knowing all of the foregoing facts, he willfully did fail to make the required income tax return to that District Director of Internal Revenue, to that Director of the Internal Revenue Service Center, or any other proper officer of the United States;

In violation of Title 26, United States Code, Section 7203.

COUNT TEN

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

During the calendar year 1986, in the Northern District of Illinois, Eastern Division,

JOHN L. CHEEEK [sic],

defendant herein, who was a resident of Elk Grove, Illinois, had and received a gross income of approximately $83,828.00; by reason of such income he was required by law, following the close of the calendar year 1986 and on or before April 15, 1987, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, in the Northern District of Illinois, Eastern Division, or to the Director, Internal Revenue Service Center, Midwest Region, Kansas City, Missouri, stating specifically the items of his gross income and any deductions and credits to which he was entitled; well knowing all of the foregoing facts, he willfully did fail to make the required income tax return to that District Director of Internal Revenue, to that Director of Internal Revenue Service Center, or any other proper officer of the United States;

In violation of Title 26, United States Code, Section 7203.

A TRUE BILL:

/s/ Milton Stennis
FOREPERSON

/s/ Anton Valukas
UNITED STATES ATTORNEY

EXCERPTS FROM THE TRIAL EVIDENCE

(p. 368) DIRECT EXAMINATION (Continued)[1]

BY MR. HEINZE:

Q. Mr. Thomson, just before we broke yesterday afternoon, you told the jury that some time after receiving a note from John Cheek that threatened to sue the person responsible for withholding from his paycheck you were sued by him. Is that correct?

A. That's correct.

Q. And did you testify that he sued you as an individual?

A. Yes, he did.

Q. And do you remember about when it was that you were sued by Mr. Cheek?

A. 1982.

Q. Okay. Do you remember if it was early in the year, late in the year –

A. Early on. March '82.

Q. What happened to the lawsuit that Mr. Cheek brought against you?

A. Well, it was some time after the appeal process had expired, I believe it was January '84, I was notified by American's legal department that the case had been dismissed as a frivolous action.

(p. 369) Q. Did you receive a copy of the opinion that the Judge had written in the case?

[1] Page references are to the trial transcript.

A. Yes, I did.

Q. I am handing you now what has been marked Government Exhibit American 9. Would you identify that.

A. Yes. It is the document I received in January '83 pertaining to that, the outcome of that case.

Q. Okay, and who is this letter from?

A. Glenn Walker.

Q. Who is Glenn Walker?

A. An American Airlines attorney.

Q. Okay, and did you receive a copy of this letter in your department?

A. Yes, I did.

Q. Has this letter been kept in the ordinary course of American's business?

A. Yes, it has.

MR. HEINZE: Your Honor, I would move that American Exhibit 9 be admitted into evidence.

THE COURT: Mr. Cheek, is there any objections to 9?

MR. CHEEK: I would like to see it. Were we given a copy of that yesterday?

MS. SAFFORD: No –

MR. HEINZE: Judge, he received a copy of this some time ago. This was the last exhibit that I showed to

him, but (p. 370) we didn't get beyond my actually handing it to him yesterday afternoon.

MR. CHEEK: No objection.

THE COURT: All right, it will be received.

BY MR. HEINZE:

Q. And what is the date of this letter, sir?

A. January 26, 1983.

Q. And you said you received a copy of this, is that right?

A. That's correct.

Q. Who is this addressed to?

A. Mr. T. F. Quinn, Jr.

Q. Okay, and would you read the first paragraph of this letter.

A. (Reading:)

"Here is the federal court's opinion in Cheek and Hall versus American Airlines, dismissing the complaint and concluding that plaintiff's complaints appear to be frivolous. Defendants' actions in withholding taxes from the plaintiffs' salaries are proper. Time for appeal has now passed."

Q. Okay. Was that portion you just read about plaintiff's complaints appeared to be frivolous and the defendant's actions being proper a quotation?

A. Yes, it was.

Q. Okay, and what is attached to this letter?

A. It's a court order.

(p. 371) Q. Okay, and at the top of the first page of the court order, does it identify what court this lawsuit was in?

A. In the United States District Court for the Northern District of Illinois, Eastern Division.

Q. Does it also say who the plaintiffs in this action were?

A. The plaintiffs are indicated as Robert C. Hall and John L. Cheek.

Q. And who are the defendants?

A. American Airlines, T. F. Quinn, Jr., M. H. Walsh and J. D. Thomson.

Q. All right. Then turning to the third page of this order, is that the final page of the order?

A. Yes, it is.

Q. And is it signed?

A. Yes, it is.

Q. And by whom is it signed?

A. It looks like Williams T. Hart, United States District Judge.

Q. Okay. What is the date on this order?

A. October 29, 1982.

Q. And could you just read the first paragraph of this last page.

A. (Reading:)

"Finally, plaintiffs' complaints appear to be frivolous. The defendants' actions in withholding (p. 372) taxes from the plaintiffs' salaries are proper. Accordingly, the defendants' motions for summary judgment are granted and each case is dismissed with prejudice."

* * *

(p. 583) *WILLIAM E. BOGNER*, called by the government, previously affirmed.

DIRECT EXAMINATION (Continued)

BY MS. SAFFORD:

Q. Mr. Bogner, when we broke for lunch I had just asked you questions relating to a transcript in the tax court proceeding on March the 6th, 1984. Do you have that exhibit before you?

A. Yes, I do. That is Court Exhibit 3-A.

Q. Now, I was just about to ask you, and let me now ask you the question, during the course of the trial did Mr. Cheek put forward various arguments relating to tax matters?

A. Yes, he did. Extensively.

(p. 584) Q. Now, did he introduce an argument as to whether he was a taxpayer subject to the Internal Revenue tax?

A. Yes, he did.

Q. I am going to direct your attention, please, to page 15 of the transcript and ask that you read the transcript beginning at line 16 of page 15 with the notation that Mr. Cheek is speaking. Would you go ahead, please, and read through line 24.

A. You will have to bear with me, Miss Safford. Some of the pages aren't numbered. I think I have it. It starts out with "All right"?

Q. That's correct.

A. "All right – "?

Q. Who is speaking?

A. Mr. Cheek is speaking. (Reading:)

"All right. With all due respect to you, Judge Parker, I would like to read you the term 'taxpayer,' which I am challenging. It is 7701(a)14:

" 'The term "taxpayer" means any person subject to any internal revenue tax,' and I have stated for the record that I am challenging the fact that I am a taxpayer. I have stated for the record that I am in the wrong court."

Q. And did the Court respond?

A. (Reading:)

(p. 585) "Your argument is frivolous. Now proceed."

Q. Did Mr. Cheek make an argument as to whether he was a person or individual as described in the internal revenue laws?

A. Yes, he did.

Q. All right. Directing your attention, please, to page 16, beginning at line 1, the new sentence which begins with the word "Person –" Is that Mr. Cheek speaking?

A. Yes, that is Mr. Cheek speaking.

Q. Would you read, please, from line 1 through line 8.

A. (Reading:)

"Person. 'The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.'

"I would like to state for the record that I am not the person described by 7701(a)(1) as far as – "

Q. And then did the Court speak?

A. Then the Court said:

"Mr. Cheek, that is a frivolous argument, and you are a person and you are a taxpayer. Now proceed with the tax issues that are before the Court."

Q. Did Mr. Cheek during the course of the proceedings make an argument that the payment he received from American Airlines was not wages within the meaning of the Internal Revenue Code?

A. Yes, he did.

(p. 586) Q. All right. Now would you turn, please, to page 17, line 5 and read from line 5 the new sentence that begins there, through line 17.

A. That begins with the number "3401"?

Q. That's correct. Who is speaking?

A. Mr. Cheek.

Q. What did Mr. Cheek say?

A. (Reading:)

"3401(a), 'Wages. For purposes of this chapter the term "wages" means all enumeration – ' "

Q. And is that supposed to be "remuneration"?

A. I believe it is. (Reading:)

" '. . . .for services performed by an employee for his employer.' I would like to state for the record that I don't make wages. I, incorrectly, in past documents, used the word 'wages.'

"In all future, and if you are allowed to amend on the record, statements, I would like to substitute the word 'pay' or 'paycheck' for the word 'wages,' because wages are compensation that are made by an employee. I am not an employee.

"An employee is a public servant or an officer of a corporation. I do not qualify for that position."

Q. And what did the Court say?

A. (Reading:)

(p. 587) "Mr. Cheek, your position is utterly frivolous."

Q. Would you turn then, please, to page 18, lines 20 through 25. Did the Court continue?

A. Yes, she did.

Q. And what did the Court say?

A. (Reading:)

"Well, I understand the issue very well, because I have heard this argument time and time again from many taxpayers throughout the country, and it is a frivolous argument."

MR. CHEEK: Object. That's not page 18, it –

MS. SAFFORD: All right. I'm sorry. We marked copies, but I didn't mark mine.

BY MS. SAFFORD:

Q. Would you start, please, at line 17.

A. Was I on page 18?

Q. On page 18 at line 17. I'm sorry.

A. Where Mr. Cheek is speaking?

Q. Yes.

A. And how far should I go?

Q. From 17 to the bottom of the page, then lines 1 through 4 on page 19.

A. And beginning on line 17?

Q. That's correct.

A. Mr. Cheek is speaking. (Reading:)

(p. 588) "I don't think I will prove anything to you because I don't think you understand the issue, and I don't think you are an impartial decisionmaker."

Q. And what did the Court state?

A. (Reading:)

"Well, I understand the issue very well because I have heard this argument time and time again from many taxpayers throughout the country, and it is a frivolous argument."

Q. And then Mr. Cheek?

A. Mr. Cheek said:

"I have just informed you I am not a taxpayer."

Q. And the Court?

A. (Reading:)

"Well, I am sorry, Mr. Cheek, but you are in error."

Q. Did Mr. Cheek also make an argument during the course of the proceedings that the tax didn't apply to individuals because the word "direct" doesn't appear in the Sixteenth Amendment?

A. Yes, he did.

Q. And would you turn your attention, please, to page 23 – Can you find it?

A. Yes.

Q. – to line 19.

(p. 589) A. Beginning with –

Q. Excuse me. Beginning with line 8, Mr. Cheek speaking.

A. How far should I go?

Q. From line 8 to the bottom of the page and then through the first two lines of page 24.

A. I'm sorry. Line 8?

Q. Yes, that's right.

A. (Reading:)

"From the Constitution of the United States, ratified February 3, 1913: 'The Congress shall have power to levy and collect taxes on income, from whatever source derived, without apportionment, among the several states, and without regard to any sense of their enumeration [sic].'

"I would like to state for the record that Congress, our friends in Washington, proposed the Sixteenth Amendment without the word 'direct' on July 31, 1909. Since a constitutional amendment is not a constitutional amendment until it is ratified, according to Article V of the Constitution, by three-quarters of the states, it became the Sixteenth Amendment on February 3, 1913.

"I would like to emphasize for the record the word 'direct' is missing. The Congressional Record indicates that the Senate, and I think, if you will (p. 590) study the record, I think you will also find that the House discussed putting 'direct' in the Sixteenth Amendment."

Q. And what did the Court respond to Mr. Cheek is regard to that?

A. (Reading:)

"Mr. Cheek, this argument is utterly frivolous. It has been considered by this Court and other courts and consistently rejected. You are wasting your time."

Q. And did Mr. Cheek also advance the argument that income taxes are an excise tax?

A. Yes, I believe he did.

Q. All right, and, directing your attention to the bottom of page 24, line 24 – excuse me – yes, line 24 and through 25, and then on the following page through line 7, would you read there, please.

Who is speaking?

A. Mr. Cheek is speaking. You said beginning at line 24?

Q. Yes.

A. (Reading:)

"I would like to emphasize for the record that the Sixteenth Amendment defined 'income' as an excise tax, that that didn't extend the taxing power of the Constitution or Congress."

(p. 591) Q. And what did the Court state?

A. "You are wrong, Mr. Cheek."

Q. What did Mr. Cheek state?

A. "From what the Supreme Court said in those decisions."

Q. And what did the Court state?

A. "You are misconstruing those decisions, and this Court is quite familiar with them. Proceed."

Q. Did Mr. Cheek advance the argument that the income tax was a temporary tax put in place during World War II?

A. Yes. Yes, he said that.

Q. All right. Directing your attention to the bottom of page 25, lines 22 through 25, and the beginning of page 26, lines 1 through 6. Would you please read there.

A. Yes. This is Mr. Cheek speaking:

"Public Law, October 21, 1942, it is 56 Statutes at Large, 884, Section 172, temporary tax on individuals, victory tax on individuals.

"I would like to state for the record, if we have got an income tax on individuals, why do we need a victory, temporary tax on individuals?"

Q. And what did the Court state?

A. "Mr. Cheek, that is an utterly frivolous argument. It has been considered by this Court and rejected in numerous cases, and I am not going to plow through that again."

Q. Did he make the argument or advance the argument that he (p. 592) doesn't make income when he exchanges his labor for his wages?

A. Yes, he did.

Q. And directing your attention, please, to page 27, would you read lines 21 through 25.

A. This is the Court speaking:

"The Internal Revenue Code taxes income from all sources. Now let's proceed."

Q. And what did Mr. Check state?

A. (Reading:) (Transcribed as spoken)

"I have no argument to Internal Revenue Code taxes income; my argument is I don't make income when I exchange my life for contract."

Q. And what did the Court state at the top of page 28?

A. "That is an utterly frivolous argument."

Q. Did Mr. Cheek make the argument that he was not subject to income tax because he is a sovereign individual?

A. Oh, yes, yes, he said that.

Q. Okay. Directing your attention, please, to page 44, line 23, beginning with, "Since I am a sovereign –" and continuing through page 45, line 1.

A. Now, page 44, line 23?

Q. Yes.

A. And going how far?

Q. To the top, line 1, the first sentence.

A. Okay. This is Mr. Cheek speaking now:

(p. 593) "Since I am a sovereign individual, I have – I strongly object to this violation of administrative procedures, which denies due process."

Q. And what did the Court state?

A. "Your objections are frivolous."

Q. Did he make the argument that wages are not taxable because he doesn't work for an employer?

A. Yes.

Q. Now would you direct your attention, please, to page 69, lines 20 through 25. What did Mr. Cheek say?

A. Lines 20 through 25?

Q. Yes.

A. Mr. Cheek speaking:

"I deny the use of the word 'wages.' "

Q. What did the Court say in response?

A. (Reading:)

"You may deny it, but you are an employee of American Airlines, and they pay your wages, and it is taxable income. Now, you can call it apple pie if you wish, but that does not change the legal characterization of it."

Q. Did he make the argument on that day, March of 1984, that the income tax laws are ineffective because there is no enforcement clause in the Sixteenth Amendment?

A. Yes, he said that also.

(p. 594) Q. All right. I direct your attention, please, to page 72.

A. What line?

Q. Lines 8 through 11.

A. All right.

Q. Or, excuse me, lines 1 –

A. The first line there on the page?

Q. Yes.

A. Mr. Cheek speaking:

"Could I ask why the enforcement clause is missing from the Sixteenth Amendment?"

Q. And what did the Court respond?

A. "That is frivolous, and you have been through that once before."

* * *

(p. 629) MR. HEINZE: Your Honor, at this point the government would offer into evidence Government Exhibit Court 4, which is a certified copy of certified records from the United States District Court, Northern District of Illinois, certified by the clerk of the court.

(p. 630) This relates to case No. 82 C 2304. The plaintiffs in the suit were Charles D. Schaut, Albert Reich, John Cheek, Norman Krah and Michael Smith.

The last names there, Schaut is spelled S-c-h-a-u-t; Reich is spelled R-e-i-c-h; Cheek is the common spelling; Krah is K-r-a-h; and Smith is the common spelling.

The defendant in the case is the Commissioner of Internal Revenue. Then the certified copies of records are

the docket sheet from the lawsuit, the complaint for injuctive and declaratory relief filed by the plaintiffs, a copy of the memorandum opinion issued by the Court on March 8, 1984, and the Judge was Abraham Lincoln Marovitz.

Then there are some attachments to that which also came in the file, which are copies of letters sent to Mr. John Cheek, Norman Krah and to Michael Smith from the Director of the Service Center at Kansas City.

THE COURT: Is there any objection to these documents?

MR. CHEEK: I have no objection if I can introduce parts of the record when it is my turn.

THE COURT: Well, anything that is part of the court record, if it is relevant, will certainly be admitted. These are received.

MR. HEINZE: Your Honor, at this time I would ask to be able to read portions of the memorandum opinion to the jury.

MR. CHEEK: No objection.

(p. 631) MR. HEINZE: As I said, this is an opinion issued by Judge Marovitz, dated March 8, 1984 – well, actually, first of all, I will go to the complaint for injunctive and declaratory relief filed by the parties. Paragraph 1 states:

"Jurisdiction and venue. This is an action brought pursuant to the Declaratory Judgment Act, 28 USC, Section 2201, concerning claims of violations of the Fifth and Sixteenth Amendments to the Constitution of the United States."

Paragraphs 3 and 4 are entitled "Parties." (Reading:)

"The plaintiffs, Charles D. Schaut, Albert Reich, John Cheek and Norman Krah, are wage earners employed in this district."

Then, No. 4:

"The defendant, the United States of America, and the Commissioner of the Internal Revenue Service are responsible for the enactment of the Internal Revenue Code, Title 26, USC Sections 9042."

That complaint was filed on April 15, 1982, or dated that, April 15, 1982.

Turning then to the memorandum opinion issued by Judge Marovitz, it is entitled "Memorandum Opinion to Motion to Dismiss." It begins on page 1. (Reading:)

"Plaintiffs Charles D. Schaut, Albert Reich, (p. 632) John Cheek, Norman Krah and Michael H. Smith bring this action pro se against the United States of America and the Commissioner of the Internal Revenue Service, alleging that the withholding of taxes from their wages and the payment of these taxes is in violation of the authority granted under the Sixteenth Amendment to the United States Constitution. Plaintiffs seek injunctive and declaratory relief."

On page 2 the opinion states:

"According to the complaint, the plaintiffs are all wage earners who are employed within this judicial district, and have been subject to both the payment of income taxes and the withholding of taxes from their

wages. Plaintiffs claim that wages are not taxable under the Sixteenth Amendment, and, thus, the withholding from and the payment of taxes from their wages violate their Fifth Amendment due process rights. Plaintiffs request that the Court declare that they are not subject to being taxed by the Internal Revenue Code because they are wage earners and thus not subject to income tax provisions. Plaintiffs also request that the Court enjoin defendants from subjecting plaintiffs to withholding taxes."

The opinion continues on page 4 under the heading (p. 633) "Anti-Injunction Act." (Reading:)

"Plaintiffs ask the Court to enter an injunction restraining defendants from subjecting their wages to withholding taxes. 26 USC 7421(a), commonly known as the Anti-Injunction Act, provides as follows:

"(a) Tax. Except as provided in Sections 6212(a) and - (c), 6213(a), 6672(b), 6694(c), 7426(a) and - (b)(1), and 7429(b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

"The principal purpose of the act is 'the protection of the government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference, and to require that the legal right to the disputed sums be determined in a suit for a refund.' "

There is a citation to Bob Jones University vs. Simmon, 416 US 725-726, 1974. (continuing reading:)

"The Supreme Court has fashioned a limited exception to the act's rule prohibiting injunctive relief. In the case Enos vs. Williams Packing Company, 370 US 1, 1962, the Court conditioned an injunction on tax collection or assessment upon meeting a (p. 634) two-fold test, (1), if it is clear that under no circumstances the United States could ultimately prevail on the merits of the claim, and, (2), if equity jurisdiction otherwise exists.

"Plaintiffs have not alleged any facts to support equity jurisdiction. There is no showing of irreparable injury or wrongful conduct on defendants' part," with a citation to the case of Schaffer, 515 Fed Sup 748-752, "nor can this Court say that under no circumstances could the United States ultimately prevail on the merits in this action. Plaintiffs' whole suit is premised upon their theory that wages are not income because the value of their labor is the same as the payment they receive for it, and, thus, they realize no gain.

"This argument has repeatedly been held to be without merit."

That is followed by citations to some other cases.

At the bottom of page 5 the decision continues:

"Declaratory Judgment Act. 28 USC 2201 provides that in a case of actual controversy within its jurisdiction, except with respect to federal taxes, other than actions brought under Section 7428 of the Internal Revenue Code of 1954, or proceeding under Section 505 or 1146 of Title 11, 'any court of the (p. 635) United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party

seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.' Emphasis added," and that relates to the underlining of the word " 'except with respect to federal taxes.' "

The opinion goes on:

"It is clear from the express wording of the act that it does not apply to controversies concerning federal taxes. The reasoning applicable to the Anti-Injunction Act applies with equal force to the Declaratory Judgment Act. Schaffer, 515 Fed Sup at 752, 'The congressional antipathy for premature interference with the assessment or collection of any federal tax also extends to declaratory judgments.' " Citation, Bob Jones University, 416 US at 732, Note 7.

The opinion ends, "Accordingly, defendants' motion to dismiss is granted," and it is signed Judge Abraham Lincoln Marovitz, and dated March 8, 1984.

* * *

(p. 675) MS. SAFFORD: This is in the United States District Court for the Northern District of Illinois, Eastern Division, John L. Cheek, Plaintiff, versus John Doe, Thomas Ludwig, James R. Starkey, Defendants, No. 85 C 10351.

"Memorandum Opinion and Order. Plaintiff challenges the constitutionality of the income tax and

seeks reimbursement for taxes withheld from his (p. 676) wages. The case is before the Court on the defendant's motion to dismiss and for sanctions.

"Plaintiff John L. Cheek received wages from American Airlines in the amount of $67,221.61 in 1983 and $75,145.75 in 1984.

"In January 1985 he mailed a claim to defendant James R. Starkey, District Director of the Internal Revenue Service (IRS), for the recovery of income taxes of $22,555.48 and Social Security taxes of $2,532.60 withheld from his wages in 1984.

"In April 1985 plaintiff mailed a claim to defendant Thomas Ludwig, an IRS revenue agent, for the recovery of income taxes of $2,879.66 and Social Security taxes of $2,391.90 withheld from his wages in 1983.

"Plaintiff's claims were never honored. Consequently, he filed this suit against Srakey [sic] and Ludwig in their individual capacies [sic]. Plaintiff argues that the withholding of income and Social Security taxes amounted to an unconstitutional taking of his property and that his wages are not taxable income. He requests the Court to order Starkey and Ludwig to refund the amounts withheld and to assess punitive damages.

"Defendants moved to dismiss the suit and to (p. 677) impose sanctions, costs and attorneys' fees against the plaintiff."

Now at the bottom of page 2:

"Regardless of the sufficiency of service, however, this case is frivolous on the merits. The constitutionality of the income tax laws enacted pursuant to the

Sixteenth Amendment has long been established," citing Brushaber vs. Union Pacific Railroad, 240 US 1, 1915, United States vs. Thomas, No. 85-2120, slip opinion, Seventh Circuit, April the 17th, 1986.

"Moreover, the Seventh Circuit has emphatically stated that wages are taxable income. Granzow vs. Commissioner, 739 Fed 2d 265, at page 267, Seventh Circuit, 1984; United States vs. Koliboski, 732 Fed 2d 1328, at Note 1, Seventh Circuit – 1328, Seventh Circuit, Note 1, 1980 [sic: should be 1984].

"By signing a complaint a plaintiff certifies that to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. Federal Rules of Civil Procedure 11. Rule 11 is designed to discourage dilatory or abusive tactics or lessen frivolous claims (p. 678) by requiring the Court to assess expenses and attorneys' fees against litigants, including pro se litigants, who act in bad faith in instituting or conducting litigation. Federal Rule of Civil Procedure 11, advisory committee note.

"This circuit has repeatedly recognized the propriety of assessing attorneys' fees and costs in cases where parties claim not to owe income taxes or file frivolous tax appeals. Cameron vs. IRS, 773 Fed 2d at 129; Granzow vs. Commissioner, 739 Fed 2d 269; United States vs. Ekeled," E-k-e-l-e-d," 732 Fed 2d 562 and 563, Seventh Circuit, 1984.

There is no good faith basis for the plaintiff's arguments. Sanctions are particularly appropriate here in

light of the fact that plaintiff has unsuccessfully raised essentially identical arguments in a previous action before this Court. See Schaut vs. United States, 585 Fed Supp 137, Northern District of Illinois, 1984.

"Defendants seek sanctions in the amount of their costs and attorneys' fees, which total $1,500, and a $10,000 fine."

Dropping down then to the last paragraph:

"Plaintiff's repeated abuse of the judicial system for the pursuit of frivolous cases entirely (p. 679) justifies the severe sanctions sought by defendants. The motion to dismiss is granted. Plaintiff is ordered to pay the United States $1,500 in costs and attorneys' fees, an amount this Court finds reasonable, and $10,000 as a sanction under Rule 11 for bringing this action in bad faith. It is so ordered.

"Enter: Brian Barnett Duff, United States District Court Judge, dated June 16, 1986."

* * *

(p. 687) MS. SAFFORD: I think, Judge, what we had succeeded in doing was putting in that the case was The United States Court of Appeals for the Seventh Circuit, John L. Creek vs. John Doe, Tom Ludwig and James R. Starkey, decided on June 5 of 1987.

From page 2:

"Cheek sued three employees of the Internal Revenue Service under Section 1983, a district director of the Internal Revenue Service in Chicago, an IRS agent in Schaumburg and an unknown IRS agent 'who intimidated (Cheek's employer) into giving (p. 688) plaintiff's compensation for labor property to the IRS without constitutional authority.'

"He sought reimbursement of Social Security taxes and income taxes withheld from his wages by his employer, American Airlines, in 1983 and '84 of slightly more than $30,000. Cheek's wages as a pilot for American Airlines totaled over $140,000 for 1983 and 1984.

"According to the district court's order, Cheek argued 'that the withholding of income and Social Security taxes amounted to an unconstitutional taking of property and his wages were not taxable income.'

"Cheek's complaint was dismissed for failure to properly serve the defendants pursuant to Rule 4(d)(1) of the Federal Rules of Civil Procedure.

"Cheek served the defendants by leaving a copy of the complaint with employees of the IRS offices, rather than at their homes. The district court noted that Cheek's complaint was frivolous on the merits and that there was no good faith basis for his arguments. The Court further found that the case was an appropriate one for sanctions because Cheek had 'unsuccessfully raised essentially identical claims in a previous action before this Court.' "

From page 3:

(p. 689) "The only non-frivolous argument raised on appeal concerns the imposition of sanctions. First, the

language of Rule 11 itself permits the imposition of an appropriate sanction. While the advisory committee notes indicate that the rule is designed to punish and deter frivolous suits and to discourage dilatory and abusive tactics, we have previously stated that a fine may be an appropriate sanction," omitting the citations.

"Second, the courts have previously held there is no constitutional right to bring frivolous lawsuits," citing Coleman vs. Commissioner of Internal Revenue, 791 Fed 2d 68 at page 72, the Seventh Circuit 1986.

From page 5:

"We regard $5,000, the maximum amount a tax court has the authority to impose as a penalty, as suggesting the maximum sanction appropriate in a case of this kind."

From page 6:

"Thus, notwithstanding that we reduce the sanction imposed below to $5,000, we also impose sanctions of $1,500 for bringing of this frivolous appeal. The decision of the district court is affirmed in part and reversed in part," and it is signed by the (p. 690) Clerk of the United States Court of Appeals for the Seventh Circuit.

* * *

Excerpts from opening statement of John Cheek:

(p. 891) If this were a civil trial it would be an interesting trial because the burden of proof would be a

preponderance of evidence, that is, evidence that would incline an impartial mind to one side rather than the other. If this were a civil tax fraud trial the burden of proof would be clear and convincing evidence, that is, evidence greater than a preponderance of evidence, but need not be beyond a reasonable doubt.

But this is a criminal trial. As Judge Plunkett has already instructed you, I am presumed innocent at the beginning, at the middle and at the end of this trial, up and until, and including, the time that you go back into the jury room and begin deliberations. Innocent until proven guilty beyond a reasonable doubt based on the presumption that I'm innocent to start with.

Although I am presumed to be innocent, and not even required to put on a defense, I did intend to put on an affirmative defense. If you're allowed to hear the truth and the relevant facts as I see them, the evidence will show that I was not told that I was under criminal investigation. Contrary to disobeying the law, I intended only to exercise my First Amendment right to petition the government for a redress of (p. 892) grievances by establishing the correct standing for a constitutional test case.

If you admit that you are a taxpayer, you have lost your standing to make a constitutional test case. If you admit that you are a taxpayer, and the facts will show this if I am allowed to present it, you are subject to the Internal Revenue Code and you must follow all their rules and procedures.

If you admit that you are a taxpayer, or if you sign a tax return under penalty of perjury, your wages are income, and, depending on how many of the facts that we

are allowed to get into – which I can't tell you because I am not an attorney, and, you know, the fact will show that I have been interrupted several times during the trial, and I forgot what I was going to say, and Miss Safford has intimidated me by getting up to object –

* * *

Colloquy at side-bar:

(p. 1010) MR. CHEEK: It gets into the anti-injunction act. The IRS has designed a section that says notwithstanding any part of the code, when you fill out a W-4 exemption, if you turn around and fill it out then you run right tooth and nail into the anti-injunction act and the declaratory injunction act.

THE COURT: We're not going to relitigate the question of whether you have to withhold a withholding tax.

MR. CHEEK: No; what I am saying is all this goes to my state of mind relative to the W-4s that are in front of the jury.

THE COURT: How?

MR. CHEEK: Well, it shows that I was relying on this part of the statute and then as a matter of law, if you are playing within the system, if you are a taxpayer, you have lost because of the other section of the Internal Revenue Code, 7421, I believe it is, the anti-injunction act.

You're given one right in one part of the code and that right is taken away from you in the anti-injunction act.

THE COURT: What does that have to do with whether you took 60 exemptions or allowances or wrote "exempt" on it? What has that to do with this?

MR. CHEEK: It has to do with whether or not you (p. 1011) can have a constitutional tax case.

MR. WHITMORE: But explain it to him, John.

THE COURT: Can Mr. Whitmore explain it to your Honor?

THE COURT: Go ahead.

MR. WHITMORE: What the problem is, and I know that John believes this because, you know, we have been associated a long time, and the problem is that there is a case –

What is the name of the case?

MR. CHEEK: Cheesbrough vs. United States.

MR. WHITMORE: Cheesbrough vs. United States, which states that the income tax is a tax based on self-assessment and voluntary compliance –

MR. CHEEK: No, it doesn't say that. Flora says that.

MR. WHITMORE: Which says any tax is considered voluntary, and once you pay it there is no ground for error alleging that the tax is unlawful. Now, we're not talking about a deduction here; we are talking about whether the tax is lawfully levied. If Mr. Cheek fills out an income tax return, then he is testifying that he has understood the law and that he is liable and he is assessing himself.

Therefore, he has no legal standing whatsoever to challenge the lawful validity of that tax. The only way it can be challenged successfully – now I am talking about (p. 1012) Mr. Cheek's understanding, I am not saying this is the way the law is, but that the only way to challenge that law and to have a correct standing is to not attest yourself to be one who is liable, but to have them withhold your money and then challenge it at common law. That is what Mr. Cheek keeps trying to bring out, but he hasn't given you that message, that he doesn't want to file and break the law, he wants to establish standing where he can bring this before the Supreme Court and not keep having it dismissed because of standing or because of jurisdiction.

He is trying to avoid that jurisdictional problem so he can get a court to hear the issues and not just dismiss it on the jurisdiction.

* * *

(p. 1159) So that's exactly what I did. I went to the seminar. There were approximately 200 well-dressed people in it. There was a gentleman by the name of Pip Bull who told me – or not me, he told the group, that he graduated number one in his Ivy League school, and he went into some of the details about the trust, about all the legal aspects –

* * *

(p. 1162) So what I did is I listened to the lawyers, you know, there was one main lawyer and there were several other people, I don't know if they were attorneys or whether they were just sales representatives, but the thing that really impressed me was the caliber of the people that were there. They were well dressed. The attorney presented himself as graduating cum laude, I believe that's the correct term, or, anyway, was number one from an Ivy League law school, I remember that, so it just really seemed good to me, you know, the idea just seemed good.

The part that really impressed me was written statement, and I'll read it:

> "A Word of Caution. Please don't be deceived by individuals or organizations claiming to be us. There are several individuals and organizations who have attempted to duplicate or imitate, or sometimes outright plagiarize, E.S. Publishers' program. A few standard forms and a smattering of information on trust and tax law is not going to give you a workable family trust.
>
> "Anyone who offers such a program without providing for its legal defense if challenged by the IRS or others is offering a pig in a poke. To our knowledge, no other organization offers this warranty.

> (p. 1163)"If anyone, including any government agency, challenges the tax advantages or legal integrity of a trust properly prepared pursuant to E.S. Publishers' program, E.S. Publishers will defend the trust at no cost to the student. A family trust is one of those things that should either be done right or not done at all. E.S. Publishers provides the information to do it right."

I was very impressed, especially by the written guarantee, because the one thing I didn't want to do was to get in a fight with the IRS. So what I did is, I got the information and I got with a sales representative from E.S. Publishers and I set one up.

* * *

(p. 1168) I went down to Florida and I got the shock of my life. Don O'Donnell, in conjunction with some other people, was sponsoring a two-day seminar, and the speakers were Andy Melanchinsky, Burt McCarthy and Bob Muncaster. Andy Melanchinsky got into the Constitution and he said it was the supreme law of the land, and I knew he was telling the truth because it says so right in Article VI of the Constitution. It says the (p. 1169) Constitution is the supreme law of the land and any law made pursuant to it is the law.

He said that you had to really be careful to stay out of equity jurisdiction. He said there was a difference between constitutional law and equity jurisdiction. He went into detail and explained it, and this and that, and a

lot of it went right over my head. You know, I understand a lot right now what he was saying, but at the time I didn't understand it.

Well, Burt McCarthy, he was a very professional type. He was the type that had on the nice suit and the tie. He seemed to know a lot about the IRS code, and this and that. He said that a suit was won at the kitchen table. What he was saying was that you don't win cases in court like Perry Mason. He said, "You win cases with hard work, years and years of work, years and years of training."

* * *

(p. 1170) I was really impressed that they were talking freedom and liberty and they weren't talking taxes, although it involved taxes. You know, they were saying that income – Bob Muncaster and Burt McCarthy were saying that there was no gain and profit, which had been defined according to them in Supreme Court cases as being income, gain or profit, and they (p. 1171) said that wages are an equal exchange.

They said that wages are a gift from God and that we have a right to enter into a contract. There is no gain or profit when you enter into a contract unless you're a slave to the government, because you are exchanging your God-given labor for money.

They said that income was investment income, like when you go to a bank and you draw interest, or when you have stock and you make a stock capital gain.

You know, what the IRS refers to as passive income, the IRS, you know, based on my understanding of tax

law, you know, when you're a taxpayer and playing within the system, active income according to the IRS is what they refer to as wages, what I'd like to refer to as compensation for labor.

Later on in the testimony, if I remember, I will explain why I made the statement that I didn't make wages. It was from a technical standpoint. It is really somewhat important from a technical standpoint, but I think that there are two kinds of wages involved. I did eventually run across a Supreme Court case which said that wages are a specialized property.

So I drove these guys around. I gave them some money because I thought, "These guys are fighting for my liberty and freedom. I don't have the ability to fight because I can't fight the IRS. I don't want to fight." You know, I (p. 1172) would rather play tennis with Jerry, play tennis with my brother, have a good time. I don't know anything about legal work, and this and that. I thought I don't know anything about legal work, and this and that, but I feel guilty, because I know they are fighting for my liberty.

What they told me really – it really made sense. I could understand for the first time in my life that I realized that they weren't giving me any value on a 1040 tax document for my labor. I understood enough about the calculations to realize that they were not distinguishing between passive income and active income, according to their definitions.

* * *

(p. 1173) So it really made sense. I drove the guys around and I felt like I could buy my freedom, and I went

over to Don's and he showed me a Red Beckman tape, and if there is anything Red Beckman can do, he can keep it simple and he can get to the point. If I may, I would like to diagram exactly what I saw in that video.

* * *

(p. 1179) So, anyway, I watched this Red Beckman film, and, believe me, Red Beckman can do it a little bit better than I can, and he puts a few parts in that have been left out, but I thought, "Boy, does he keep it simple! This really makes sense."

I got ready to come home and Don asked me, he said, "Well, what do you think? It is just as clear as if it happened yesterday. I said, "I think it's fantastic. You guys are doing fabulous. Keep up the good work.

* * *

(p. 1191) I believe it was in October 1980, I joined MACBA. MACBA is a satellite of NCBA, which Mr. Voss testified about.

What they have is three booklets about constitutional taxation, and during this period, starting in October, I am not sure of the exact sequence, I remember specifically going to three different seminars that were taught by George Thiel on the various books. You know, what George Thiel did as a paralegal was he just conducted a constitutional seminar that was sponsored by MACBA, you know, strictly for the purpose of teaching people about constitutional law and taxation, basic minimum

principles about courtroom procedure on civil suits, matters like that, you know, the general knowledge that he had based on manuals.

* * *

(p. 1199) Also during this period I went back to Florida and attended a seminar sponsored by my friend, Captain O'Donnell. It was taught by Dan Pilla. It was a two-day course. It was "Your Right to Fight in the Courts Where it Counts."

This is the information that was contained in the package. This is how to use Shepard's citations, which is a legal procedure when you're reviewing. I do not intend to tender this into evidence. I just wanted to explain it to make reference to my state of mind.

Also during this period, I think it was October 1980, I joined NCBA. These are the three manuals that we get. (Indicating)

* * *

(p. 1200) Well, the only thing is, these manuals were issued, like Mr. Voss said, in 1980, and I think, like he said, they may have come in single units. What I do remember is taking three two-day seminar courses that were taught by George Thiel on the various manuals, we had a seminar on each manual, if I remember correctly, but this was in the fall and winter of 1980, and, as previously mentioned, I believe, I joined both MACBA, which is the local satellite, and NCBA in the late fall or early winter, 1980.

In addition to attending these three two-day educational seminars, I attended several patriot or liberty meetings. Different speakers spoke. One of the things that I obtained during this time was the confidential IRS Audit Guide –

* * *

(p. 1203) The book is "A Management Guide for Trustees." It is "The Family Trust." It is also put out by E.S. Publishers. I do not intend to offer it into evidence, but I wanted the jury to see it just to realize that it was sold, (p. 1204) with the package.

THE COURT: All right.

MR. CHEEK: I think it is really important to understand during this period that I started seeking sources of information. I subscribed – well, I had been subscribing for a couple of years because of Don O'Donnell to a publication called "The Justice Times," and it is just a – am I allowed to show the back of it or the front half of it, or should I –

THE COURT: What is it?

MR. CHEEK: It is just a newspaper, you know, it is a monthly newspaper that deals strictly with the liberty and patriot movement. About 90 percent of it is on taxes. You know, just 10 percent of it is on other –

THE COURT: All right. You're not planning to read from it?

MR. CHEEK: No, I –

THE COURT: You're just telling the jury –

MR. CHEEK: I am not even going to tender it. The only thing I wanted to state is I have been subscribing to this continuously for more than 10 years.

THE COURT: That's fine.

MR. CHEEK: All right. The same thing applies to "The Spotlight." It is a newspaper put out by Liberty Lobby. This is a weekly newspaper. It has a weekly series by Dr. Martin Larson. He has got a Ph.D. He writes an article about (p. 1205) – I would say 75 percent of his articles are on taxes or trusts. Every now and then he gets into something like socialism, or something like that.

This is another newspaper, it is called the "Correspondents." This one is put out by The Golden Mien's Team out of Missoula, Montana. I have subscribed to this one for about three years. It used to be out of Phoenix, Arizona under their Golden Mien's Society. It was Chuck Reilly and Peggy Christianson. They split up and one of them stayed in Phoenix and the other one went to Montana.

These are just representative of a very small sample of the patriot, more or less underground newspaper publications, that most of the public are not aware of. Most of the information starts off with the Justice Times. They place ads in this and you can subscribe.

The main significance is that you can read through this and –

MS. SAFFORD: Your Honor, I object to the form of the testimony now. He is lecturing to the jury on the significance of his exhibit rather than testifying what it was he –

THE COURT: No, that's all right. Go ahead, Mr. Cheek.

MR. CHEEK: The significance as it affected my state of mind is there is a lot of information in here, a tremendous amount of information. The hardest thing you run into when you (p. 1206) first start is you don't know what's the truth and what is not the truth, but there is a tremendous amount of information that you can see and you can go check out if you have got the time.

You know, when you get to the level that I am at right now, it is like the attorney for American Airlines said, you know, that you're not the same when you graduate from law school as you were when you began. I can look at this now, you know, and see the part that is trash, I can look at the stuff I already know, and then, every now and then, I see something that is new that really catches my interest.

You know, I have the ability now to go to a law library and check it out. The important thing of significance to me was the source of information. It also allows people just like myself, people like John Voss - there are people just like me all over the country -

MS. SAFFORD: Objection.

MR. CHEEK: - and it allows a source of communication.

THE COURT: No, he - that can stand.

MR. CHEEK: Which affects your state of mind.

Okay. The bottom line of the whole thing, and the thing that really kept me going, is I believed what these

guys were saying, I believed Bob Muncaster, Amy Melanchinsky; it was so simply that our labor had to have some value, it was so simple that the IRS was not distinguishing between gain and profit from a revenue taxable activity and a contract, in my (p. 1207) opinion, and more than one patriot was saying this.

But, you know, it seemed to be too good to be true and, you know, when you more or less got shock treatment you really wondered, but the thing that really, really impressed me on top of that was the fact that my friend Don O'Donnell said the IRS wouldn't answer my letters. I went through the entire year of 1980 without getting a single question answered.

I remember writing specifically three different letters that asked real easy questions, numbered questions. Well, I take that back. The one I just read today didn't have the questions numbered.

But there was a letter to Mr. Padden that asked two questions that were numbered, the November the 25th letter asked five questions that were numbered, and then the one on the trust asked a couple of simple questions. The IRS didn't answer a single question.

I think I testified earlier that I always filed the trust returns and the other returns around April the 15th, and the reason of course, is because everybody fears an audit. Even if you can justify your deductions, and everything, just getting the paper together and everything is a real harassment.

So I sent them a letter - well, actually, I revoked and rescinded my signature on all past 1040's and W-4s. By

now, based on NCBA lectures and all the other stuff I am catching from the speakers, the fact that they are not (p. 1208) answering my letters, I am pretty well convinced that there is something to this argument that if you have the proper standing in the private sector when you work and exchange your labor there is no gain or profit, which is what these patriots were telling me income is, and that is what some of these cases I am reading in these books say.

* * *

(p. 1227) Being still a little bit uncertain because, you know, it is hard to change ideas that you have had all your life, I was very, very interested in going to licensed counsel and seeing what licensed counsel had to say about the issue, and I remembered an attorney, Robert L. Collins, who had spoken at a seminar sponsored by The Mid-America Commodity and Barter Association, and I went over to him and talked to him, I (p. 1228) mentioned my situation, and the first thing he said was, he said, "Well, I can set up an offshore trust where you won't pay any tax at all."

* * *

He spoke at the seminar in, I believe it was in February, but I don't remember, you know. It has been six or seven years ago. The gist of it was I said, "I relied on legal counsel when I set up my family trust. I am not going to rely on legal counsel to set up an offshore trust. I don't want anything to do with Internal Revenue rules and regulations. The Internal Revenue Code is just too much for me to comprehend. (p. 1229) It's just too thick,"

you know, "The only thing I want is, I want you to research it and see if you can find law or your understanding of the law confirms my understanding of the law that there is a violation of constitutional rights involved in the way that we are taxed," and I said, "Base it strictly on the Constitution. I am definitely not interested in an offshore trust."

* * *

(p. 1230) He came up with an opinion dated August the 27th, 1981, which I would like to tender as Defendant's Exhibit 29, and with the Court's permission, I would like to read to the jury.

* * *

(p. 1236) (letter from attorney Collins):

"A former commissioner of internal revenue stated, 'Our tax system is based on the individual self assessment and voluntary compliance.'

"Furthermore, by filing tax returns the taxpayer is stripped of all constitutional rights under the first 20 amendments of the United States Constitution and also of most rights under his state constitution."

Turning to page 2: (Continuing reading:)

"Finally, you make a valid contention, which has (p. 1237) never been adjudicated by the United States Supreme Court, that Congress' power to tax comes from Article I, Section 8, Clause 1 of the U.S. Constitution, and not from the Sixteenth Amendment and that the letter, construed with Article I, Section 2, Clause 3, never authorized a tax on wages and salaries, but only on gain and profit."

* * *

(p. 1277) What this is, is a book that is filed with Xerox copies of cases. There are probably, out of these volumes I think there are probably around 35 volumes, there are probably around, oh, I would estimate maybe 100 pages of statutes, and the rest of it are cases.

I would estimate that 80 percent of these cases are Supreme Court cases. There are probably maybe 15 percent, maybe 18 percent that are court of appeals and district court cases. Probably two to five percent are state cases, primarily state supreme court cases.

What happened is, I got started in the patriot movement, I went to a lot of meetings and I heard a lot of things, but I didn't know whether the people were telling me the truth or not. I believed them like one of the witnesses that testified for the prosecution did about Mr. Thiel.

* * *

(p. 1281) Well, the Anti-Injunction Act is a statute that is built into the Internal Revenue Code and it says, "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

Also, if you get into the declaratory judgment act, which is Title 28, Section 2201, "In a case of actual controversy within its jurisdiction, except with respect to federal taxes, any court of the United States upon the filing of an appropriate pleading may declare the rights and other legal relations of any interested party seeking such declaration."

After I lost a couple of suits, one against American Airlines, where we filed a voluntary non-suit, and one against – I have got a mental block – oh, that was the Schaut suit, where we tried to stop withholding. This was my first indication that a lot of this information we were getting from these patriot movements and our own research wasn't doing the job, so I started digging into the books and I came to the conclusion that you could not stop the withholding of a tax.

* * *

Excerpts from cross-examination of John Cheek:

(p. 1360) A. There is a tremendous organization throughout this country of people just like me, who dearly love our country, we'll risk criminal prosecution, and collusion between the IRS and the Justice Department, where you're not invited to your grand jury indictment, simply because we think the Federal Reserve is the biggest fraud that has ever been palmed off on –

Q. You have a strong disagreement with the Federal Reserve system, right?

A. Absolutely.

Q. And a strong disagreement with the way the law is enforced as to the Internal Revenue laws?

A. My disagreement is based on principle.

Q. On principle?

A. Yep.

Q. It is a very principled and strong disagreement with the law, isn't that right, as it is being administered?

A. I don't think you could say it's that. It is my belief that the law is being enforced unconstitutionally.

Q. Right. You disagree with the way the courts are carrying out the law, is that what you are saying, sir?

A. I don't think I'm saying that at all. I think the Supreme Court has done more to prevent tyranny than the rest of the (p. 1361) people in this county put together.

* * *

Excerpts from the closing argument of John Cheek:

(p. 1623) MR. CHEEK: (Continuing) I am not a tax protestor. I'm not a person who believes in not paying his taxes. I know that each one of you on the jury probably pays taxes on your right to work. I know each and every one of you probably feels it is part of your duty as an American patriot to contribute and pay your fair share of taxes. I agree in principle with proper taxation for legitimate functions of government, but I don't agree with the mess we're in today. A two point eight trillion dollar debt measured in trade units in a private, tax exempt series of 12 corporations, in a two hundred billion dollar annual budget deficit, in a balance of payment trade deficit of about one hundred eighty billion dollars a year, in a Wall Street that is crashing.

I don't agree that our children, if we have got any, being born with a two point eight trillion dollar debt on their heads, that they have got to pay interest on – you and I can't go out and borrow money on unborn children, even ours. Where does the Constitution give the government authority to do that?

(p. 1624) Furthermore, very few people realize it, but there was a statute passed in 1978, Public Law 95-435, that said the budget had to be balanced in 1981. No ifs, ands, buts or maybes. It is on the statute books, Public Law 95-435. They didn't tell you that side of the story.

I didn't spend seven years of my life going to law libraries, not playing tennis with my friends, not romancing girls, to keep from paying taxes they say I owe, when

they know the amount of money I received from American Airlines. That's ridiculous. I have made good money. I have spent a lot of money, a lot of it on patriot activities.

I went in with my brother and we bought our 72-year-old mother a home. That is the one big expense I have spent for.

Look at the books over there. (Indicating) Look at the research. Where is the motive? Why would somebody, making the kind of money I am making, do this to try and deceive anybody? How can you deceive anybody when they tell you the W-2s are on magnetic tape? Who are they kidding? That's not the reason.

The only reason I did what I did is because I believe in this country. There are not too many people like me left. I believe in property taxation. I believe in lawful constitutional money. Those are the facts.

Somewhere along the line something went wrong. (p. 1625) we've been had. They're taxing us too much. It's improper. It's unfair. I don't even have to tell you this. Each and every one of you knows that.

What's the answer to everything today? "We'll raise taxes." Well, that's crazy.

So I'm not a tax protestor. Look at the letters I have written. I have told the IRS exactly what I was going to do. I have done research. I am a concerned American. I believe in our country.

The public debt has tripled in less than the eight years that Reagan has been in office. It was a little less than a trillion dollars. It is now two point eight trillion dollars. Triple the debt in eight years in office.

I want to tell you, not only am I dedicated, I am here fighting for your rights and my rights, too. I'm working for your freedom and my freedom, because it's going down the drain. If I can't get to the Supreme Court and I can't help myself, and I can't help you, then we're all going to lose.

That is why John Cheek is in this court today. I'm not in this court because I don't want to pay my taxes and I want to shaft you and my fellow man. I wouldn't do that. I've never shafted anybody. It's not my style, you know.

* * *

INITIAL JURY INSTRUCTIONS

(p. 1671) THE COURT: Ladies and gentlemen, we have now reached that portion of the trial where I instruct you as to what the law is, and you don't have to memorize all the law that I am going to read to you because the law together with the exhibits will be sent back to you and you will be free to consult the instructions if you wish to do so.

However, I read it to you because the law is that I am required to read it all to you. I just tell you in (p. 1672) the beginning you don't have to memorize it, but listen to it because it covers all the things that relate to the evidence that you have heard.

Members of the jury: The evidence and arguments in this case have been completed and I will now instruct you as to the law applicable to this case. It is your duty to follow all of the instructions.

You must not question any rule of law stated by me in these instructions. Regardless of any opinion you may have as to what the law ought to be, you must base your verdict upon the law given by me.

It is your duty to determine the facts from the evidence in this case. You are to apply the law given to you in these instructions to those facts and in this way decide the case.

You are the sole judges of the credibility of the witnesses and of the weight to be given to the testimony of each one of them. In considering the testimony of any witness you may take into account his or her intelligence,

ability and opportunity to observe, age, memory, manner while testifying, any interest, bias or prejudice the witness may have, and the reasonableness of the witness's testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other (p. 1673) witness.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be. You are the sole and exclusive judges of the facts.

Opening statements of counsel for the government and by the defendant are for the purpose of acquainting you in advance with the facts the parties expect the evidence to show. Closing arguments of the government and the defendant are for the purpose of discussing the evidence.

Opening statements, closing arguments and other statements of the parties should be disregarded to the extent they are not supported by the evidence.

During the course of the trial it often becomes the duty of the government or of the defendant to make objections and for me to rule on them in accordance with the law. The fact that either party made objections should not influence you in any way.

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits received in evidence and admitted or judicially noticed facts.

You are to consider only the evidence received in this case. You should not consider this evidence in the light – I'm sorry. Let me start over.

You are to consider only the evidence received (p. 1674) in this case. You should consider this evidence in the light of your own observations and experiences in life. You may draw such reasonable inferences as you believe to be justified from proved facts.

You are to disregard any evidence to which I sustained an objection or which I ordered stricken. Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded. You should not be influenced by sympathy, prejudice or public opinion.

Certain flyers, newspapers and other materials which were originally attached to letters in evidence have been deleted from your consideration on the basis that they are irrelevant to the issues before you. You should not draw any inference from the fact that this evidence or portions of exhibits have been excluded.

The indictment in this case is the formal method of accusing the defendant of a crime and placing him on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant is presumed to be innocent of each charge. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and it is not overcome unless from all the evidence in the case you are convinced

beyond a reasonable (p. 1675) doubt that the defendant is guilty.

The government has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove his innocence or to produce any evidence.

There are two types of evidence, direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

You have heard some evidence concerning the defendant's filing tax returns in years prior to those charged in the indictment. Those relate to the years of '78 and '79. You may consider this evidence only on the question of intent, knowledge, absence of mistake or accident. This evidence is to be considered by you only for this limited purpose.

You have heard testimony of an expert witness. This testimony is admissible where the subject matter involved (p. 1676) requires knowledge, special study, training or skill not within the ordinary experience, and the witness is qualified to give an expert opinion.

However, the fact that an expert has given an opinion does not mean that it is binding upon you or that you are obligated to accept the expert's opinion as to the facts. You should assess the weight to be given to the expert opinion in the light of all the evidence in this case.

The weight to be given to any particular evidence is not necessarily determined by the number of witnesses testifying on behalf of each side. You are to consider all the evidence in the case in determining the credibility of the witnesses. You may find that the testimony of a smaller number of witnesses for one side is more credible or believable than the testimony of a greater number of witnesses for the other side.

There have been admitted in evidence certain schedules or summaries. They truly and accurately summarize the contents of voluminous books, records or documents, and should be considered together with and in the same manner as all other evidence in the case.

The defendant has introduced evidence of his character. More specifically, the defendant has introduced reputation and opinion evidence about character traits of truthfulness and honesty. You should consider character (p. 1677) evidence together with and in the same manner as all of the other evidence in the case.

The defendant is charged in this indictment with the crime of willfully attempting to evade and defeat his income tax for 1980, 1981 and 1983, willful failure to file individual income tax returns for 1980, 1981, 1983, 1984, 1985 and 1986, and with making a false claim for a refund to the Internal Revenue Service for the tax year 1982. The

defendant has denied that he is guilty of all of the charges.

Failure to comply with the requirements of the federal income tax laws for one year is a separate offense from such failure to comply for a different year. Defendant's tax obligations in any one year must be determined separately from his tax obligations in any other year.

The defendant is charged in Counts One, Three and Six with a willful attempt to evade and defeat his individual income tax for the years 1980, 1981 and 1983. The defendant has denied he is guilty of those charges.

Section 7201 of title 26 of the United States Code provides in part that "any person who willfully attempts in any manner to evade or defeat any tax imposed . . . " and now I am leaving out a few words, "shall be guilty" of a criminal violation of the laws of the United States.

To sustain the charge of attempting to evade or defeat the defendant's individual income tax with respect (p. 1678) to a particular year the government must prove the following propositions:

First: That on April 15 of the year following the tax year in question substantial federal income tax was due and owing from the defendant; and

Second: That the defendant knowingly and willfully attempted to evade and defeat such tax by one or more of the acts charged in the particular count of the indictment.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, with respect to a particular

year, then you should find the defendant guilty of the count which relates to that year.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt with respect to a particular year, then you should find the defendant not guilty of the count which relates to that year.

An essential element of the crime of attempting to evade or defeat tax is that, after subtracting the deductions and exemptions allowed by law, the defendant owed the United States substantial tax in excess of that amount withheld by his employer.

The government is not required to prove the exact amount of tax due alleged in the attempted evasion (p. 1679) counts. All that need be proved, or proven, is that the tax due was "substantial" as that term is defined in these instructions.

The word "substantial" as used in these instructions means an amount greater than some small amount, relative to the circumstances of the case. "Substantial" under the statute involved in this case means that the amount of tax due and owing is not explainable because of error, oversight or a reasonable conclusion by the defendant that the amount was inconsequential.

"To attempt to evade or defeat the tax" means to willfully commit any act in any manner, the purpose and intent of which was to evade or defeat the tax due from the defendant.

The acts of attempt to evade or defeat the tax charged in Count One as to 1980 are that the defendant filed various false Employee Withholding Allowance Certificates, Form W-4, and made a claim for a refund of moneys withheld from his wages in 1980.

The acts of attempt to evade or defeat the tax charged in Count Three as to 1981 are that the defendant supplied his employer with Forms W-4 in which he falsely claimed he was exempt from withholding, mailed various letters to American Airlines to prevent their withholding of income taxes, and made a claim for a refund of all federal taxes (p. 1680) withheld from his wages in 1981.

The acts of attempt to evade or defeat the tax charged in Count Six as to 1983 are that the defendant supplied his employer with Forms W-4 in which he falsely claimed to be exempt from withholding, threatened to sue individual employees of American Airlines for complying with Internal Revenue Service requirements, used the Mid-America Commodity and Barter Association as a depository and conduit for his income, issued a letter of demand on American Airlines for taxes withheld, and made claims for refunds of taxes withheld and threatened suits against the Internal Revenue Service.

The government must prove beyond a reasonable doubt at least one of the alleged affirmative acts constituting an attempt to evade or defeat tax due and owing with respect to a particular year. However, the government need not prove each act alleged in the indictment as to that year.

The act or attempt to evade or defeat any tax may, but need not occur before, at the time, or after the tax for

the particular year became due and owing. However, the crime is not complete unless and until there is a tax due and owing.

A taxpayer's return which does not represent an honest and reasonable intent to supply the information regarding income required by the tax code is not a return within the meaning of the Internal Revenue Code or the (p. 1681) regulations adopted by the Commission.

Political or social protest does not constitute a valid legal justification for an individual's failure to file a tax return Form 1040 containing sufficient information as required by law from which the tax can be computed.

An individual who refuses to disclose the amount of his income derived from a legitimate source on the grounds that such disclosure would violate his Fifth Amendment privilege against self-incrimination has improperly invoked and asserted the Fifth Amendment privilege, unless he can show some possibility that such a disclosure may lead to a criminal prosecution.

Revelation of income from legitimate activities, in which no criminal activity was involved, would not constitute self-incriminaton. For instance, legitimate income from business or the profession of being an airline pilot would not come within the Fifth Amendment privilege as asserted by this defendant.

Whether an act constitutes a willful attempt to evade or defeat income tax is a question of fact for you to decide. Affirmative willful attempt may be inferred from any conduct the likely effect of which would be to mislead or conceal. If the tax evasion motive plays any part

in such conduct the offense may be made out, even though the conduct may also serve other purposes.

(p. 1682) The indictment charges in Counts One, Three and Six that one of the means by which the defendant willfully attempted to evade and defeat his individual income tax was by filing false and fraudulent employee withholding exemption certificates, Forms W-4, in which he claimed more withholding exemptions than he was entitled to or claimed to be exempt from withholding. The law requires that "the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled."

The law provides that an employee may not claim exemption from withholding unless he or she had no tax liability in the prior year and expected to have no tax liability in the year in which he files a W-4 claiming to be exempt.

If you find that the defendant did complete and file such forms and that the defendant supplied false or fraudulent information on such form, then you should decide whether in doing so his purpose and intent was to evade or defeat his individual income tax by preventing withholding of income tax by his employer.

Defendant's knowledge of the contents of his tax withholding forms, Forms W-4, may be inferred from the facts and circumstances of the case, including his signatures (p. 1683) on the tax withholding forms involved here.

The law presumes that a person who signs a tax withholding form is aware of the contents of the form. Thus, you may find from the defendant's signature at the bottom of a tax withholding form that he had knowledge of the contents of that form.

When the word "knowingly" is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident. Knowledge may be proven by the defendant's conduct, and by all the facts and circumstances surrounding the case.

The element of knowledge may be satisfied by inferences drawn from proof that a defendant deliberately closed his eyes to what would otherwise have been obvious to him. A finding beyond a reasonable doubt of a conscious purpose to avoid enlightenment would permit an inference of knowledge.

Stated another way, a defendant's knowledge of a fact may be inferred from willful blindness to the existence of the fact. It is entirely up to you as to whether you find any deliberate closing of the eyes, and the inference to be drawn from any such evidence. A showing of negligence or mistake is not sufficient to support a finding of willfulness or knowledge.

(p. 1684) An objectively reasonable good faith misunderstanding of the law negates willfulness. An objectively reasonable good faith misreading of the law may be based upon the defendant's own legal research or an attorney's advice. Good faith reliance does not require

that the defendant's research come to a correct determination of the law, nor that the attorney's advice be correct. It requires that the defendant honestly and reasonably believe his research or the advice, and believe that it is correct and relies upon it.

Disagreement with the law does not constitute a good faith misunderstanding of the law, because it is the duty of all persons to obey the law whether or not they agree with it. Persistent refusal to acknowledge the law does not constitute a good faith misunderstanding of the law.

A person may not prevent the collection of a tax by filing a suit seeking to prevent the collection of that tax.

A person does not waive any constitutional objections to taxes paid by following the procedures of Title 26, United States Code, Section 7422, which requires a person making a claim in the United States District Court for refund of taxes to pay the taxes before bringing suit for refund.

The defendant has testified as to what he states are his interpretations of the United States Constitution, court opinions, common law and other materials he has reviewed. (p. 1685) He has also introduced materials which contain references to quotations from the United States Constitution, court opinions, statutes, and other sources.

He testified he relied on his interpretations and on these materials in concluding that he was not a person required to file income tax returns for the year or years charged, was not required to pay income taxes and that

he could claim exempt status on his W-4 forms, and that he could claim refunds of all moneys withheld.

These materials and the defendant's testimony on questions of law have been admitted solely for the purpose of aiding you in determining whether the defendant's conduct was knowing and willful. You are not to consider this evidence as containing any law that you are to apply in reaching your verdicts, because these interpretations are contrary to the law. All the law applicable to this case is set forth in these instructions.

The defendant is charged in Counts Two, Four, Seven, Eight, Nine and Ten with the crime of willful failure to file individual income tax returns for the years 1980, '81, '83, '84, '85 and '86. The defendant has denied he is guilty of those charges.

Section 7203 of Title 26 of the United States Code provides in part that: "Any person . . . required by this title . . . to make a return . . . who willfully fails to . . . make such (p. 1686) a return . . . at the time or times required by law . . . " shall be guilty of a criminal violation of the laws of the United States.

To sustain the charge in Counts Two, Four, Seven, Eight, Nine and Ten, which cover those years I just mentioned, of the indictment of willful failure to file an individual income tax return, the government must prove the following propositions:

First, the defendant was a person required by law to file a return for the calendar year in question;

Second: For that calendar year the defendant failed to file a return as required by law, and

Third: The defendant acted willfully and knowingly.

If you find from your consideration of all the evidence as to a particular count that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of that count.

If, on the other hand, you find from your consideration of all the evidence as to a particular count that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of that count.

Compliance with the income tax laws is mandatory and not voluntary.

For the years 1980, '81, '83 and '84, a single (p. 1687) individual under the age of 65 was required to make and file an individual income tax return if that individual had a gross income of $3,300 or more.

For the years 1985 and 1986 an individual income tax return was required of a single individual under 65 if that individual had a gross income in excess of $3,430 and $3,560, respectively.

"Gross income," as that term is used in these instructions means all income from whatever source derived, including wages and compensation, fees, commissions and similar items and gross income derived from business. Therefore, with respect to the phrase "gross income" used in these charges you are instructed as a matter of law that if you find the defendant received wages or other compensations or fees for services in a particular year then you must find the defendant received gross income in that year.

The government is not required to prove the exact amount of gross income alleged in the willful failure to file counts. All that need be proven is that the defendant's gross income exceeded the statutory amount for the year in question.

If you find beyond a reasonable doubt that the defendant had the requisite gross income for the particular year charged in the indictment, then as a matter of law he was required to file a tax return for that year by April 15 of (p. 1688) the year following.

Similarly, if you find beyond a reasonable doubt that the defendant had a tax liability for the particular year, then, as a matter of law, that tax was due and owing on April 15 of the following year.

A person who is required to file an income tax return must file a Form 1040. The filing of a Form W-2 with the Internal Revenue Service does not constitute the filing of an income tax return as required by law.

When used in these instructions the term "willfully" means a voluntary, intentional violation of a known legal duty, as distinguished from a violation which is accidental, inadvertent or negligent. In establishing that the defendant acted willfully it is not required that the government show that the defendant had a bad purpose.

The defendant is charged in Count Five with making and presenting a false and fraudulent claim for refund to the Internal Revenue Service for the tax year 1982.

The defendant has denied he is guilty of that charge.

Section 287 of Title 18 of the United States Code provides in part that "whoever makes or presents to any

agency of the United States any claim upon the United States, knowing such claim to be false or fraudulent" shall be guilty of a criminal violation of the laws of the United States.

(p. 1689) The term "agency of the United States" includes the Internal Revenue Service.

To sustain the charge of making a false claim the government must prove the following propositions:

First: That the defendant made or presented a claim to the Internal Revenue Service, an agency of the United States;

Second: That the claim was false or fraudulent;

Third: That the defendant knew the claim was false or fraudulent.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Intent may be proved by circumstantial evidence. You may consider any statements made and acts done by the defendant, all of the facts in evidence and the reasonable inferences to be drawn from such facts in determining defendant's intent.

Under Title 26, United States Code, Section 3401(c) the term "employee" includes privately employed

wage (p. 1690) earners performing services in the relationship of an employee to employer. Privately employed wage earners are subject to the income tax laws of the United States.

The provision in Title 26, United States Code, Section 6020, that permits the Secretary of the Treasury to prepare a tax return for an individual who has not filed is irrelevant and does not negate in any way the obligation of individual taxpayers to file their own returns.

With respect to the counts charging failure to file tax returns, there is no requirement that the government prove a tax liability, so long as the proof establishes that the taxpayer had a gross income in an amount which required him to file a return.

It is the defendant John Cheek's theory that he did not willfully fail to file tax returns for the years 1980, '81, '83, '84, '85, '86, nor did he willfully attempt to evade and defeat the income taxes for the years 1980 through 1983.

Mr. Cheek's theory is that he acted at all times in good faith, that is, that he honestly and reasonably believed he was not required to file tax returns. Mr. Cheek contends that he honestly and reasonably believes he is not a taxpayer. He also contends that he has been attempting to test the constitutionality of the income tax laws as well as the applicability of the tax laws to him and he cannot do so (p. 1691) by filing tax returns.

Mr. Cheek contends that his lawsuits against American Airlines and the Internal Revenue Service, his extensive legal research and his frequent conversations

with several attorneys, including a written opinion from an attorney Robert L. Collins, demonstrate that he has an honest and reasonable belief that he is not required to file tax returns.

Among other things, Mr. Cheek contends that his wages from a private employer, American Airlines, does not constitute income under the Internal Revenue Service laws. Mr. Cheek also contends that his membership in MACBA and MCBA and his filings of W-4s with the Internal Revenue Service claiming 30 or 60 withholding allowances, as well as claiming exempt status, were not designed or intended to evade federal income taxes because he has contended since 1980 that he is not required to file tax returns or to pay federal income taxes.

If you find that Mr. Cheek honestly and reasonably believed that he was not required to pay income taxes or to file tax returns, then you should find Mr. Cheek not guilty of all the charges.

Upon retiring to the jury room select one of your number as your foreperson. Your foreperson will preside over your deliberations and will be your representative here in court.

(p. 1692) Forms of verdict have been provided for you. I'll show them to you. There are three. You should sign only one of them.

The first says:

"We, the jury find the defendant John L. Cheek guilty as charged in the indictment."

This is the form you would sign, the foreperson and all the other jurors, if you concluded that he is guilty of all the charges in the indictment.

The second form says:

"We, the jury, find the defendant John L. Cheek not guilty as charged in the indictment," and again a place for the signatures of the foreperson and all the other jurors.

This is the form you would sign if you conclude that Mr. Cheek is not guilty of any of the charges contained in the indictment.

Finally there is a form that says:

"We, the jury, find the defendant John L. Cheek guilty as charged in Counts ___," and that is left blank, "of the indictment, and not guilty as charged in Counts ___" and that is left blank.

This is the form you would sign if you determine that Mr. Cheek was guilty of some charges in the indictment and not guilty of others. In that situation you would have (p. 1693) to set forth those counts on this line that you find him guilty of and those counts of this line that you find him not guilty of. (Indicating)

You will have a copy of the indictment and you will also have the instructions that outline all those different counts, so you will be able to determine that should this form represent your verdict.

Obviously you sign only one of the three. The other two are left blank.

Take these forms to the jury room with you and when you have reached unanimous agreement on the verdict your foreperson will fill in and date the appropriate form and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the Marshal.

The verdict in this case must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous. You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views and listen to the opinions of your fellow jurors. Discuss your differences with an open mind.

(p. 1694) Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong, but you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The 12 of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

Thank you for your patience, folks. That concludes the instruction portion of the trial.

* * *

NOTES FROM THE JURY DURING DELIBERATIONS AND CORRESPONDING SUPPLEMENTAL INSTRUCTIONS

A. Jury Note of 4:15 p.m., November 10, 1987, and Court's Supplemental Instruction:

Trial Transcript, pp. 1705-1706;
Note from the Jury:

(The following further proceedings were had herein at 4:33 o'clock, p.m.:)

THE COURT: I have the following communication from the jury, which I got about 15 minutes ago:

"Judge Plunkett:

"We as a jury have been unable to agree on a unanimous verdict.

"We have a basic disagreement between some of us as to if Mr. Cheek honestly & reasonably believed that he was not required to pay income taxes.

"We have struggled with this point for part of the morning & the entire afternoon with no movement.

"Page 32 discusses good faith misunderstanding & disagreement. Is there any additional clarification you can give us on this point?

"Page 53 is the one we cannot get by as to his belief.

"James R. Burgener"

* * *

Trial Transcript, pp. 1723-1724;
Court's Supplemental Instruction:

THE COURT: Miss Safford, I was going to add to the instruction the following language, "You have asked for a clarification of page 32 of the instructions discussing good faith misunderstanding and disagreement. As I instructed you, an objectively reasonable good faith misunderstanding of the law negates willfulness. However, a person's opinion that the tax laws violate his constitutional rights does not constitute a good faith misunderstanding of the law. Furthermore, a person's disagreement with the government's tax collection systems and policies does not constitute a good faith misunderstanding of the law. This additional instruction should be read and considered with all the other instructions in considering your verdict.

"The government has the burden of proving willfulness beyond a reasonable doubt."

* * *

B. Jury Note of 7:10 p.m., November 10, 1987, and Court's Supplemental Instruction:

Trial Transcript, p. 1726;
Note from the Jury:

(THE FOLLOWING FURTHER PROCEEDINGS were had herein, in chambers, at 7:20 o'clock, p.m. of the same date:)

THE COURT: All right. The jury writes me at 7:10:

> "We, the jury, are unable to reach a decision. We are all in agreement that Mr. Cheek did not file tax returns in the years charged. We are all in agreement that Mr. Cheek filed incorrect W-4 forms. We are divided on the issue as to if Mr. Cheek honestly & reasonably believed that he was not required to pay income tax. We feel that no amount of deliberation will reach a unanimous decision."

It is signed by Mr. Burgener and the 11 other jurors.

* * *

Trial Transcript, pp. 1757-1759;
Court's Supplemental Instruction:

THE COURT: Folks, I am going to give you a couple of additional instructions and then reread one I gave to you earlier. It is in response to a question the jury sent me two days ago about clarifying for you an honest and reasonable belief, and when I answered that I sent an answer which was not as complete as it should have been, and, accordingly, I am going to answer that question in a more complete manner by these additional instructions.

Ladies and gentlemen of the jury, an objectively reasonable good faith misunderstanding of the law negates willfulness. Whenever the word "reasonable" is used in these instructions it means objectively reasonable.

I instructed you that if you find Mr. Cheek honestly and reasonably believed he was not required to pay income taxes or to file tax returns you should find Mr. Cheek not guilty of all the charges.

To find Mr. Cheek not guilty under that instruction you must find both that Mr. Cheek held the belief honestly and that his belief was objectively reasonable.

An objectively reasonable belief means a belief held by a reasonable person acting reasonably. An honest but unreasonable belief is not a defense and does not negate willfullness.

An objectively reasonable good faith misunderstanding of the law, as I told you before, negates willfulness.

An objectively reasonable good faith misreading of the law may be based on the defendant's own legal research or an attorney's advice if such research and advice are objectively reasonable.

Good faith reliance does not require that the defendant's research come to a correct determination of the law, nor that the attorney's advice be correct if there is a bona fide dispute of law on the issue.

Advice or research resulting in the conclusion that wages of a privately employed person are not income or that the tax laws are unconstitutional is not objectively reasonable and cannot serve as the basis for a good faith misunderstanding of the law defense.

Disagreement with the law does not constitute a good faith misunderstanding of the law because it is the duty of all persons to obey the law whether or not they agree with it.

Persistent refusal to acknowledge the law does not constitute a good faith misunderstanding of the law.

As I told you before, the government at all times bears the burden of showing willfulness.

* * *

POST-VERDICT NOTES FROM THE JURY

Trial Transcript, pp. 1764-1765:

THE COURT: Now, the jury has written three documents for me which I will now read into this record.

The first note is signed by all the jurors and it says:

"Judge Plunkett:

"We are herein returning our verdict of guilty as charged on all counts.

"Some of our jurors wished to express their personal opinions. These opinions are not meant to affect in any way their verdict of guilty. These opinions are forwarded as a complaint against the narrow & hard expression under the constraints of the law.

"We would request that if possible this statement be read in court."

With that document is a document from Miss Keith that says:

"Judge Plunkett:

"I feel Mr. Cheek is a reasonable person and sincerely believes in his cause. I felt I had to write to express what I sincerely feel. I know the gentleman is guilty of a crime. However, I honestly believe he believes so deeply in his cause that he has risked everything for this cause and truly does not believe he is breaking the law."

Mr. Diener writes:

"A "Honest and Sincere in His Cause" – He is *Guilty*

"B Not "Objectively Reasonable" He Is Guilty."

Mr. Diener, I am a little unsure of what that expresses.

JUROR DIENER: What I meant there was that his cause was honest and sincere, which he's guilty since we only had this one way – you know, he's guilty, he's – his honesty and sincerity is sincere.

THE COURT: I see.

JUROR DIENER: The other part –

THE COURT: But not objectively reasonable?

JUROR DIENER: (sic) Is guilty.

THE COURT: Okay.

JUROR DIENER: I was trying to bring that out to clarify –

THE COURT: I see what you're saying. All right.

* * *